IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. 1050

CITY OF DETROIT,
a Michigan Municipal Corporation,
and
COUNTY OF WAYNE,
a Michigan Constitutional Body Corporate,
Petitioners and Appellants,
vs.
GENERAL MOTORS CORPORATION,
a Delaware Corporation,
Respondent and Appellee

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN and APPENDIX

(For List of Attorneys see inside front cover)

LIST OF ATTORNEYS

CITY OF DETROIT, a Michigan Municipal Corporation, Petitioner.

By ROBERT REESE,
Corporation Counsel.

VANCE G. INGALLS,
JULIUS G. PLISKOW,
Assistants Corporation Counsel.

and

COUNTY OF WAYNE, a Michigan Constitutional Body Corporate, Petitioner.

By SAMUEL H. OLSEN,
Prosecuting Attorney.

ALOYSIUS J. AUCHY,
WILLIAM F. KONEY,
Assistant Prosecuting Attorneys,
1010 City-County Building,
Detroit 48226, Michigan.

TABLE OF CONTENTS

	Page
A. Opinions Below	2
B. Jurisdiction	2
C. Questions Presented For Review	3
D. Statutes Involved	3-4
E. Statement of the Case	4-9
(a) Federal Questions Raised Below	6-9
F. Reasons for Granting Writ	9-16
Conclusion	17
Appendix A—Statutes, Local Acts and Charter Provisions	1aa-7aa
Appendix B—Decision of Michigan Supreme Court in General Motors Corp. v. City of Detroit and County of Wayne	7aa

AUTHORITIES CITED

City of Detroit v. Gray, 22 NW 2d 771	8, 9
Continental Motors Corp. v. Twp. of Muskegon, 112 NW 2d 429	7, 11
Detroit v. Murray Corp., 355 US 489	3, 9, 14
Detroit v. Murray Corp. (Petition for Rehearing), 357 US 913	8, 10, 13
Detroit Shipbuilding Co. v. City of Detroit, 199 NW 645	8, 11
General Motors Corp. v. City of Detroit and County of Wayne, 126 NW 2d 108	6, 8, 9, 12, 14
General Dynamics Corp. v. Los Angeles County, 330 P 2d 794	13
Martin Co. v. State Tax Comm. of Maryland, 171 A 2d 479	13

Page

McCulloch v. Maryland, 4 Wheat. 316 14
People v. Lechner, 11 NW 2d 918 12
Rummel v. Musgrave, 350 P 2d 825; 364 U.S. 293 ... 15
Scholle v. Sec'y of State, 104 NW 2d 63 12
United States v. Allegheny, 322 US 174 11

LAW REVIEW ARTICLES

George Washington Law Review, Vol. 26, Fall Quarter, p. 741 13
University of Detroit Law Journal, Feb., 1959, p. 323 13

TEXT

Annotated State Taxes on Federal Contractors, 2 L. Ed. 2d 1789 15

STATUTES, LOCAL ACTS AND CHARTER PROVISIONS

Charter, City of Detroit, Title VI, Chapters 2 and 4. 4, 5
Compiled Laws, Michigan, 1948, 211.1 (P.A. 1893, No. 206) 4, 5
Compiled Laws, Michigan, 1948, 211.53 ..... 4, 5
Local Act, Michigan, 1879, No. 378, as amended 4
C. 646, 62 Stat. 929 (28 U.S.C.A. 1257 (3)) 2
C. 646, 62 Stat. 961, as amended by C. 139 §106, and 63 Stat. 104 (28 U.S.C.A. 2101(c)) 2

IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No.....

CITY OF DETROIT,
a Michigan Municipal Corporation,
and
COUNTY OF WAYNE,
a Michigan Constitutional Body Corporate,
Petitioners and Appellants,
vs.
GENERAL MOTORS CORPORATION,
a Delaware Corporation,
Respondent and Appellee

PETITION FOR WRIT OF CERTIORARI

To: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Michigan, entered in the above-entitled cause on February 3, 1964.

A. OPINIONS BELOW

The opinion of the Supreme Court of Michigan, highest court of said State, appears in 126 N.W. 2d 108. Opinion and judgments entered in Wayne Circuit Court were not reported but appear in Appendix of Appellants (printed for the Supreme Court of Michigan on petitioner-appellants' appeals), nine copies of which Appendix have been filed with this Court. (Rule 23, (iii) f.)

B. JURISDICTION

(1) Two suits for recovery of disputed city and county of Wayne personal property taxes for 1959 based on an assessment placed against appellee and respondent by order of Michigan State Tax Commission dated November 13, 1959, were consolidated for purposes of trial in the Wayne Circuit Court and again on appeal. Said suits were disposed of together by opinion of Michigan Supreme Court February 3, 1964, in Appeal Nos. 50261 and 50260 affirming summary judgments ordered by the Trial Judge. The Supreme Court, without applying the tests of constitutional immunity, held that machinery and equipment owned by the United States and possessed and used by defense contractor in making goods for United States were not subject to city or general property taxes on personal property.

(2) Jurisdiction of this Court to issue a writ of certiorari is conferred by C. 646, 62 Stat. 929 (28 U.S.C.A. 1257 (3)); C. 646, 62 Stat. 961, as amended by C. 139 §106, 63 Stat. 104 (28 U.S.C.A. 2101(c)).

The issues raised being identical, this petition is intended to apply to both the city and county case in conformance with Rule 23.(5).

C. QUESTIONS PRESENTED FOR REVIEW

1. Whether there is a conflict with *Detroit v. Murray Corporation* (355 U.S. 489) in determination of Michigan's Supreme Court that machinery and equipment owned by United States and possessed and used by defense contractor (General Motors Corp.) in making goods for United States were not subject to city or general taxes on personal property.

2. Whether the determination of Michigan's Supreme Court disregarded tests established by this Court in Murray for implied constitutional immunity from non-discriminatory local property taxes.

3. Whether these local non-discriminatory taxes and the laws on which same are based are valid inasmuch as no direct burden was imposed on the Federal Government in violation of its implied constitutional immunity.

4. Where state law and local charter have been held to authorize taxes against a person in possession of tangible personal property, title to which is in another, does the fact that here title to such property is in the United States render the taxes invalid.

5. Whether private defense contractor may have the benefit of immunity from non-discriminatory local taxes on personal property, title to which is in the United States, and which is located in contractor's plant and which it is using on tax day.

D. STATUTES INVOLVED

Statutory provisions connected with the issues are referred to below. Being too lengthy to set forth here in full, the pertinent text appears in Appendix A attached hereto.

Sec. 211.4, C. L. Mich., 1948;

Sec. 211.53, Ibid.;

Sec. 7, Ch. II, Title VI, Charter of City of Detroit;

Sec. 1, Ch. IV, Title VI, Ibid.;

Sec. 26, Ch. IV, Title VI, Ibid.;

Local Act Mich. 1879, No. 378 as amended by Local Act Mich. 1943, No. 6 and by Local Act Mich. 1951, No. 5.

E. STATEMENT OF THE CASE

(Numbers in parentheses are references to the separately bound Appendix of Appellants (petitioners herein), filed in Michigan Supreme Court, unless otherwise noted.)

The matter here presented involves the review of two consolidated causes brought by respondent-appellee to recover non-discriminatory personal property ad valorem taxes levied by petitioner-appellants based on a common assessment as of December 31, 1958, placed against respondent by Michigan State Tax Commission on November 13, 1959. Said causes were based on respondent's claims for refund of 1959 city, school, and county taxes paid under protest to the respective petitioners. These taxes were levied and imposed upon respondent because of location within respondent's Cadillac Motor Car Division Plant in Detroit of certain machinery and equipment, furniture, and fixtures, title to which was admittedly in the United States. (App. 35a, 50a)

United States-owned personalty alone is involved, not machinery or equipment owned by respondent, nor inventory of parts, supplies, or other required items being worked on in the course of producing the items called for by respondent's supply contracts with the Government. (App. 47a)

The amount of the assessment ($2,354,630.) represents valuation of the personalty involved, arrived at the same as it would have been had the title to said machinery not been in the United States. Said machinery was available for operation by respondent's employees and was, in fact, being operated by them on December 31, 1958—tax day in Michigan. (App. 49a)

Excluded from the assessment were certain items of machinery which were recognized as being idle and not in use on such date. (App. 49a)

The personalty here involved was assessed, i.e., the value thereof was included by Michigan State Tax Commission, in an assessment placed against plaintiff "as the person in possession subject to prior rights of the Federal Government." (App. 50a)

Such assessment and respective taxes based thereon were ad valorem in nature. The amounts thereof were spread upon the tax rolls of petitioners City and County in the same manner as in the case of personal property subject to Michigan's General Property Tax Act, P.A. 1893, No. 206, as amended; and the Charter of City of Detroit, 1919 (Title VI, Chapters 2 and 4, as amended). (App. 50a)

On January 7, 1960, respondent made payment of city and school taxes in the amount of $100,396.70; and on January 15, 1960, also paid county taxes in the amount of $16,466.64, based on said 1959 assessment of $2,354,630. Said payments were accompanied by letters to the respective collectors of taxes in which were specified the grounds of respondent's protest in conformance with Sec. 53 of the Tax Act (211.53, C.L. Mich.). (App. 50a-51a)

Prior to hearing on respondent's motion for summary judgment, depositions were taken at request of both parties; records of respondent were examined and stipulations prepared, executed, and filed to the end that these causes could be submitted to the Trial Judge so far as possible upon undisputed facts. (App. 37a) Withholding decision on the motion for summary judgment, testimony was heard; and although a full trial was held, the Circuit Judge issued his opinion in favor of respondent granting summary judgments for which Orders were entered against the respective petitioners on January 9, 1963. (App. 78a, 80a).

Following appeals and oral argument to Michigan's court of last resort, the Orders for summary judgment were affirmed based on opinion of the Supreme Court of Michigan in the two causes as reported in 126 N.W. 2d 108. A copy of the latter opinion is appended hereto as Appendix B. (Rule 23 (5ii) i)

(a) Federal Questions Raised Below

Federal questions challenging validity of the Michigan statutes including Charter of Detroit on the ground of their being repugnant to the Constitution of the United States were timely and properly raised. Notably, at the following stages of the proceedings below:

(a) Second Amended Declaration, (App. 7a), paragraphs 6, 7 (App. 9a and 13a);

(b) Consolidated Answer (App. 19a), paragraphs 6, 7 (App. 21a, 26a);

(c) Reply (App. 33a), paragraph 2 (App. 33a);

(d) Stipulation of Facts (App. 37a), paragraphs 26 (App. 47a); 27 (App. 48a); 31, 32, 33 (App. 50a);

(e) Summary of the Results of the Pre-trial Conference (App. 54a, 56a, 57a, 58a);

(f) Opinion of the Court (App. 74a-78a).

Significantly, the Trial Court stated (76a):

> "Prior to Murray no attempt was ever made to levy and collect such a tax under these circumstances. Then along came Murray where the Supreme Court of the United States, according to Continental misconstrued our tax laws and opened the door to litigation such as we have in the instant case."[1]

Among Statement of Questions Involved in appellants' (petitioners herein) Brief in the Michigan Supreme Court were the following, which raised pertinent Federal questions for review:

> "V. Was it proper for the Trial Judge to declare as overruled the decision of the United States Supreme Court in Murray (355 U.S. 489) which decision was concerned with the Government's implied constitutional immunity from State or Local Taxation which interferes with its property, agencies or instrumentalities?
>
> "The Trial Judge said 'Yes'.
>
> Appellants say the answer should be 'No'."
>
> "VI. Did the Trial Judge misinterpret the majority opinion in Murray which had accepted the construction of Michigan's State and Local Tax laws by our Supreme Court rather than arriving at a construction of its own as the basis for the United States Supreme Court's determination that the tax against Murray was constitutionally valid?
>
> "The Trial Judge did not discuss this issue.
>
> Appellants say the answer should be 'Yes'."

---

[1] Continental Motors Corp. v. Township of Muskegon, (1961) 112 N.W. 2d 429. (A copy of this opinion is also appended to Appendix For Appellants separately filed herewith.)

"VII. Did the conclusion of the Trial Judge, based on the lone dissent of Mr. Justice Frankfurter (357 U.S. 913) on Petition for Rehearing in Murray, fail to distinguish between an ad valorem tax involving real estate, which is in rem, and an ad valorem tax involving personalty, which is in personam?

"The Trial Judge did not discuss this issue. Appellants say the answer should be 'Yes'."

The opinion of Dethmers, J., does not mention the statement of the Trial Court: "Murray has been overruled". Neither are comments made on reliance by the Trial Court on dissenting opinion in Murray by Frankfurter, J., (App. 76a). However, it is significant that Dethmers, J., the very first time Murray is referred to, cites 355 U.S. 489 but adds 78 S. Ct. 458 and 486; 2 L. Ed. 2d 441 and 460, the latter pages of which carry the dissent of Frankfurter, J., in the series of tax cases decided on March 3, 1958 by this Court.

Finally, on the third and final question raising such Federal question, the opinion of Dethmers, J., states (110 N.W. 2d 126 N.W. 2d):

"Defendants' discussions of where the legal incidence, as distinguished from economic burden of the tax, falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental."

Further, it was stated (Ibid):

"Either way the tax was improperly assessed. Cases such as Detroit Shipbuilding Co. v. City of Detroit, 228 Mich. 145, (199 N.W. 645) and City of Detroit v. Gray, 314 Mich. 516, (22 N.W. 2d 771)

interpreting the charter provision here pressed by defendants, are of no help to them because those cases involved personal property owned by one person and in the possession of another, not, as here, property of the United States immune from taxation."

F. REASONS FOR GRANTING THE WRIT

1. Decision of the Michigan Supreme Court is probably not in accord with Detroit, et al. v. The Murray Corporation, (1958) 355 U.S. 489.
2. Need for clarification of intent of Murray decision for future inter-Federal-State relationships.
3. Effect on United States and local communities.
4. Pending litigation in which petitioners are involved.

1. Conflict with Decision in Murray

The introduction by the reporter in General Motors opinion at bottom of p. 108 (126 N.W. 2d) reads:

> "Actions to recover personal property taxes paid under protest. The circuit court of Wayne County, Joseph A. Moynihan, Jr., rendered summary judgments against defendants and they appealed. The Supreme Court, Dethmers, J., held that machinery and equipment owned by United States and possessed and used by defense contractor in making goods for United States were not subject to city or general tax on personal property."

The importance of having a writ issue is highlighted by this summation. It reveals that the decision of the Michigan Supreme Court is probably not in accord with applicable decisions and, notably, the holding of this Court in Detroit and Wayne County v. The Murray Corporation, 355 U.S. 489.

The instant cases are virtually the same as Murray.

The identical statutory and Charter provisions are involved.

Identical authorities were claimed in support.

Similar procedures were followed at the administrative level.

Here, the only difference is that petitioners did not question title of the property in possession of respondent, but conceded that title was in the United States.

However, there is a total absence here as in Murray of any showing of interference with or obstruction of the Government, its property, its agencies, or instrumentalities.

Such conflict results from a pyramiding of erroneous concepts, the first of which appears in the sole dissent by Frankfurter, J., on June 9, 1958, on denial by this Court of petitions of the Murray Corporation and the United States for rehearing, 357 U.S. 913.

His dissent demonstrates a self-chosen construction of Michigan's tax laws and a disregard for prior construction thereof by the highest court of this State.

Petitioners urged below in their brief in the State court:

> "The majority opinion in Murray did not see fit to analyze the underlying authority for the assessment and tax involved. It was sufficient for the majority to conclude that the tax did not infringe on the federal government's implied immunity from state taxation. In so doing they avoided construing Michigan's tax law and Detroit's Charter but instead they accepted our own Supreme Court's decision saying (p. 493 U.S., *supra*):
>
> "'It is not disputed that Michigan law authorizes the taxation of the party in possession under

such circumstances. Cf. Detroit Shipbuilding Co. v. Detroit, 228 Mich. 145, 199 N.W. 645; Detroit v. Gray, 314 Mich. 516, 22 N.W. 2nd 771."

"* * * All of the Justices with the exception of Mr. Justice Frankfurter declined to consider the Government's arguments for rehearing. From a reading of his lone dissent anyone who had read the several opinions in Allegheny as well as those in Murray would conclude that he was goading the majority to specifically reverse its former opinion in Allegheny."[1]

The misconstruction of said dissent was adopted without question by the writer of opinion in a Michigan case decided subsequent to Murray on December 28, 1961, in Continental Motors Corporation v. Twp. of Muskegon, 112 N.W. 2d 429, a copy of which due to its length appended to Appendix for Appellants (Rule 23, (iii) i). At p. 198, he stated:

"The scheme of assessment and collection of taxes disclosed by the foregoing is consonant only with an ad valorem tax on the ownership of property (*City of Detroit v. Phillip, supra*, and *Piquard v. Auditor General, supra*), the possessor being assessed only as a collection agent for the taxing authority with the statutorily granted right to reimbursement from the owner whose primary duty it is to pay the tax (*Crawford v. Koch, supra*). See Mr. Justice Frankfurter's opinion dissenting from the supreme court's denial of rehearing in the Murray Case at 357 U.S. 913 (78 S. Ct. 1145, 2 L. ed 2d 1164)."

Compounding this erroneous construction, the Trial Court in the present case (App. 76a-77a) stated:

---

[1] United States v. Allegheny, 322 U.S. 174, 197-8.

> "The words of Mr. Justice Frankfurter in his dissent filed in connection with petition for rehearing in Murray seems to be most appropriate in the instant case."

Following his quoting from said dissent, the Trial Judge summarily said:

> "Murray has been overruled, Continental Motors v. Muskegon Township, 365 Mich. 191, 195:"

and concluded (App. 78a):

> "Continental controls at this writing.[1] * * *"

This was followed by opinion of Deghmers, J., on the appeal of the instant case when he stated at p. 109-110 of 126 N.W. 2d:

> "The trial court's decision was planted on our holding in Continental Motors Corporation v. Twp. of Muskegon, 365 Mich. 191, that * * * Michigan's general property tax act did not authorize taxation of possessory interests held by individuals in personal property owned by the United States.
>
> "Defendants stress what they term distinctions on the facts between this case and Continental. These may be pertinent to other objections raised by plaintiff to the tax. They are not so as to the controlling point in Continental, also raised by plaintiff here, that no statutory (here also charter) authority existed for collection of the 1959 tax in question.
>
> "Defendant's discussions of where the legal incidence, as distinguished from economic burden of the

[1] This is out of step with recent Michigan decisions which held that prevailing opinions of United States Supreme Court are controlling. People v. Lechner, 11 N.W. 2d 918; and Scholle v. Secretary of State, 104 N.W. 2d 63.

tax falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied Constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental. * * *"

2. Clarification Required for Better Understanding

Following the divided opinions (four in all) in Murray, many words have been written which becloud the area of inter-Federal-State relationships. The reaction of the Government was indicated by filing of its petition for rehearing of a majority opinion of this Court for the first time in nine years. (Denied, 357 U.S. 913.)

A number of decisions in state and federal courts have cited Murray. The reaction of most opinions has been one of reluctant acceptance but in practice, a rejection as if some new and startling development had come about.[4] Authors of a great number of Bar Journal and Law Review articles have also adhered to views of the dissenting opinions.[5]

There is need for clarification of the Court's decision expressed in the majority opinion written by Black, J., and joined in by Mr. Chief Justice Warren; Clark, Douglas; and Brennan, JJ. The opinion presently being appealed is an indication of need to make subordinate courts better aware that it is not enough merely to determine that federally owned property has been made the subject of a state ad valorem tax. It must also be ascertained whether

---

[4] Notably, General Dynamics Corp. v. Los Angeles County, 330 P. 2d 794; Martin Co. v. State Tax Comm. of Maryland, 171 A. 2d 479.

[5] Exceptions are George Washington Law Review, Vol. 26, Fall Quarter, p. 741; University of Detroit Law Journal, Feb. 1959, p. 323.

federally owned property has been made the object of the tax, i.e., whether the United States, its agencies, instrumentalities, or property are held accountable for the tax.

As indicated by reference to Detroit Shipbuilding Co. v. Detroit and City of Detroit v. Murray interpreting the pertinent charter provisions, the opinion in General Motors held the tax was improperly assessed only because property in its possession title to which was in the United States was included in the assessment (p. 237 of 126 NW 2d). Thus while leaving those cases standing as authority for the validity of imposing a personal property tax based on an assessment against a person in possession, the opinion in General Motors arrived at an erroneous conclusion by misconstruing the opinion of this Court in Murray. It is submitted that the latter decision is not authority for cloaking General Motors, a private contractor, with governmental immunity when the assessment is made against the contractor and it alone is accountable for payment of the tax.

As this Court said in Murray, at p. 495, *supra*:

> "We find nothing in the Constitution which compels us to strike down these state taxes. There was no discrimination against the Federal Government, its property or those with whom it does business. There was no crippling obstruction of any of the Government's functions, no sinister effort to hamstring its power, not even the slightest interference with its property. Cf. *M'Culloch v. Maryland*, 4 Wheat. 316."

The majority opinion in Murray was in this respect not revolutionary. If it appeared to upset earlier decisions, it did so by revitalizing the earliest ground rules for balancing respective rights of the Government and the States, laid down by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 436.

Where a similar state tax involving real property leased from the United States was upheld (Rummel v. Musgrave, 350 P. 2d 825), this Court on October 17, 1960, granted a motion to dismiss for want of a substantial Federal question, 364 U.S. 293. This was in accord with Murray whereas the instant cases are opposite.

The Supreme Court of Michigan admittedly did not use the yardstick of legal incidence as distinguished from economic burden and did not consider whether the tax involved was based on an assessment in personam or in rem (See page 2 of Opinion appended hereto). Thus, it leaves unanswered a constitutional question for this Court to determine, namely, whether the taxes here involved violated the immunity of the Federal Government.

Because these matters are likely to remain in dispute until settled by this Court, a determination would be of valuable assistance to the bar, to industry, to the Federal, and to State governmental units.

3. Effect on United States and Local Communities

The sums involved are unusually large but that is not as important as the need for resolving contests presented in courts of the several States where government procurement contracts are in effect with local manufacturers. A large part of defense appropriations in the national budget is likely to be spent with such contractors. In those States where no personal property taxation exists but some form or forms of privilege or specific taxes are usually substituted, the latter types have been held valid by this Court when the responsibility for their payment is directly on the contractor and not on the government. (Anno. State Taxes on Federal Contractors, 2 L. Ed. 2nd 1789).

The decision of this Court in Murray held valid a non-discriminatory personal property tax against the contractor based on an assessment (valuation) of government property placed on a line of the assessment roll naming the contractor as taxpayer with the notation "assessed subject to prior rights of Federal Government."

Settlement of the question whether the decision below of Michigan's Supreme Court is in conflict with this Court's disposition of Murray is plainly in the national public interest.

4. Pending Litigation in Which Petitioners are Involved

Although Murray was decided as far back as March 3, 1958, at this writing only a few of the pending cases in the Wayne Circuit Court and in the United States District Court for the Eastern District of Michigan have been dismissed. There remain thirty (30) long standing cases pending for the years 1952-1958 and approximately twenty-five (25) cases commenced in 1959 and 1960 in Wayne County Circuit Court against petitioners herein in which a common issue of implied constitutional immunity is involved and requires disposition.

The amount of taxes at stake is upwards of four-million dollars which is of considerable importance to the city, school and county represented herein by petitioners.

Great injustice and hardship may befall said units should matters remain as they now stand with the crucial constitutional immunity issue left unanswered by the decision below in General Motors.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

CITY OF DETROIT
a Michigan municipal corporation,
Petitioner,

by ROBERT REESE,
Its Corporation Counsel,
VANCE G. INGALLS,
JULIUS C. PLISKOW,
Assistants Corporation Counsel,

and

COUNTY OF WAYNE,
a Michigan Constitutional Body
Corporate, Petitioner,

by SAMUEL H. OLSEN,
Prosecuting Attorney,
ALOYSIUS J. SUCHY,
WILLIAM F. KONEY,
Assistant Prosecuting Attorneys,
1010 City-County Building,
Detroit, Michigan 48226.

April 24, 1964.

APPENDIX A

STATUTES, LOCAL ACTS AND CHARTER PROVISIONS

Compiled Laws of Michigan 1948, 211.1 (7.1 MSA)

"Property subject to taxation. . Section 1. *The People of the State of Michigan enact* That all property, real and Personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

Compiled Laws of Michigan 1948, 211.53 (7.97 MSA)

"Any person may pay the taxes or special assessments, or any 1 of the several taxes or special assessments, on any parcel or description of land, or on any undivided share thereof, and the treasurer shall note across the face of the receipt in ink any portion of the taxes or special assessments remaining unpaid. He may pay any tax or special assessment, whether levied on personal or real property, under protest, to the treasurer, specifying at the time, in writing, signed by him, the grounds of such protest, and such treasurer shall minute the fact of such protest on the tax roll and in the receipt given. The person paying under such protest may, within 30 days and not afterwards, sue the township for the amount paid, and recover, if the tax or special assessment is shown to be illegal for the reason shown in such protest . . ."

Section 7, Title VI, Chapter 2, Charter of City of Detroit 1918 (1952 Ed.)

"After the assessment rolls shall have been fully and finally confirmed, it shall, as herein provided, be the duty of the board of assessors to cause the amount of all taxes, in dollars and cents, authorized to be assessed, and collected in each year, to be ratably assessed to each person named or lots described, upon and according to the aggregate valuation which such person or lots shall have been assessed in said assessment rolls. Such ratable assessments hall be entered in a book prepared for that purpose to be known as the tax roll for each district, in a column showing the amount of city taxes assessed to each person or lot in each year. Such tax rolls shall contain columns for the names and addresses of all persons assessed hereunder. When said tax rolls shall have been completed, the board shall deliver the same to the controller, who shall cause the same to be delivered to the city treasurer on the first day of July, take his receipt therefor and charge him therewith. All city taxes shall become a debt against the owner from the time of the listing of property for assessment by the board of assessors."

Section 1, Chapter IV, Title VI, Charter of City of Detroit, 1918 (1952 Ed.)

"* * * The owners or persons in possession of any personal property shall pay all taxes assessed thereon."

Section 26, Chapter IV, Title VI, City Charter, 1918 (1952 Ed.)

"On and after the 26th day of August in each year and at any time until the taxes mentioned herein are paid, the City Treasurer shall enforce the collection of all unpaid taxes which are assessed against the property or value

other than real estate. If such taxes shall remain unpaid the City Treasurer shall forthwith levy upon and sell at public auction the personal property of any person refusing or neglecting to pay such tax, or collect the same through the courts. Six days' notice of any such sale shall be given by the City Treasurer by publication in the official newspaper. Whenever such sale shall have been made the proceeds thereof shall be applied to the payment of the taxes and percentage and the expense of such sale, and any surplus remaining thereafter shall be paid over to the owner of such property or other person entitled to receive the same. The City Treasurer shall have power in the name of the City to prosecute any person or corporation refusing or neglecting to pay such taxes or any special assessment by a suit in the Circuit Court for the County of Wayne, and he shall have, use and take all lawful ways and means provided by law for the collection of debts to enforce the payment of any such tax or any special assessment. The tax rolls or unit cards after the tax has been transferred thereto shall be prima facie evidence of the indebtedness of such person and the regularity of the proceedings by which such tax or assessment was assessed and levied. All city taxes upon personal property shall become on said fifteenth day of July a lien thereon and so remain until paid and no transfer of the personal property assessed shall operate to divest or destroy such lien."

Act 6, Local Acts of 1943.

"AN ACT to amend sections 1, 2, 3, 4, and 5 of Act No. 378 of the Local Acts of 1879, entitled "An act to provide for the collection of state and county taxes in the City of Detroit, repealing Acts No. 241 of the session laws of 1863 and No. 88 of the session laws of 1865, amendatory thereto," as amended, and to add to said act 2 new

sections to stand as sections 8 and 9 thereof; and to repeal all acts and parts of acts in anywise contravening any of the provisions of this act; and to provide for a referendum thereon.

The People of the State of Michigan enact:

Sections amended and added.

SECTION 1. Sections 1, 2, 3, 4 and 5 of Act No. 378 of the Local acts of 1879, as amended, are hereby amended, and 2 new sections are hereby added to said act to stand as sections 8 and 9 thereof, said amended and added sections to read as follows:

SEC. 1. That hereafter when the assessment rolls of the different wards in the City of Detroit, for city taxes, are annually, fully and finally confirmed, as prescribed by the provisions of the city charter, it shall be the duty of the board of assessors of said city to make a copy of the assessment roll of each of said wards, to be known as the state and county tax rolls, upon which said board of assessors shall, upon receipt of the certificate of the clerk of the board of supervisors of said county, stating the amount of taxes apportioned to each ward, ratably assess the state and county taxes, as provided by the general laws of the state, to each of which tax rolls said board of assessors shall annex a warrant signed by the members thereof directed to the county treasurer commanding him to collect from the persons liable therefor the several sums listed therein as taxes, and which tax rolls and warrants the said board of assessors shall deliver over to the treasurer of said county on or before the tenth day of November in each year.

Sec. 2. The county treasurer, upon the receipt of said rolls, shall cause a notice to be published in 3 daily papers published in said city, stating that said rolls and warrants have been made and deposited in his office by the said board of assessors, and giving the time and manner of payment of such taxes and the penalties prescribed for the non-payment thereof. The treasurer shall also mail, to each taxpayer at his last known address on said tax rolls, a statement showing the description of the property against which the tax is levied and the amount of the tax thereon. Failure to publish said notice or send or receive such notice shall not in any way prejudice the right to collect or enforce payment of any tax. The county treasurer shall, beginning December first of each year, proceed to collect such taxes. He shall receive taxes and issue receipt therefor without interest, charges or penalty on all sums voluntarily paid on or before the fifteenth day of January of the succeeding year; upon all taxes paid after said fifteenth day of January, he shall add a collection fee of 4 per cent. From and after the first day of March next after said assessment, said taxes shall be considered delinquent within the meaning of the general tax statutes, and the county treasurer shall, in addition to said collection fee of 4 per cent, add and collect interest on said tax computed at the rate provided by the general tax laws for the collection of delinquent property taxes."

Act 6, Local Acts of 1951

"An Act to amend section 2 of Act No. 378 of the Local Acts of 1879, entitled 'An act to provide for the collection of state and county taxes in the city of Detroit, repealing Acts No. 241 of the Session Laws of 1863 and

No. 88 of the Session Laws of 1965, amendatory thereto, as amended by Act No. 6 of the Local Acts of 1943; and to provide a referendum thereon.

The People of the State of Michigan enact:

Section amended.

SECTION 1. Section 2 of Act No. 378 of the Local Acts of 1879, as amended by Act No. 6 of the Local Acts of 1943, is hereby amended to read as follows:

SEC. 2. The county treasurer, upon the receipt of said rolls, shall cause a notice to be published in 3 daily papers published in said city, stating that said rolls and warrants have been made and deposited in his office by the said board of assessors, and giving the time and manner of payment of such taxes and the penalties prescribed for the non-payment thereof. The treasurer shall also mail, to each taxpayer at his last known address on said tax rolls, a statement showing the description of the property against which the tax is levied and the amount of the tax thereon. Failure to publish said notice or send or receive such notice shall not in any way prejudice the right to collect or enforce payment of any tax. The county treasurer shall, beginning December first of each year, proceed to collect such taxes. He shall receive taxes and issue receipt therefor without interest, charges or penalty on all sums voluntarily paid on or before the 15th day of January of the succeeding year; upon all taxes paid after said 15th day of January, he shall add a collection fee of 4 per cent: Provided, That when the 15th day of January shall fall on a Sunday or holiday, such taxes may be paid to the county treasurer on the next succeeding business day without the addition of any

interest, charges or other penalties. From and after the 1st day of March next after said assessment, said taxes shall be considered delinquent within the meaning of the general tax statutes, and the county treasurer shall, in addition to said collection fee of 4 per cent, add and collect interest on said tax computed at the rate provided by the general tax laws for the collection of delinquent property taxes.".

APPENDIX B

(Attached Decision of Michigan Supreme Court.)

OCTOBER TERM 1963

STATE OF MICHIGAN

SUPREME COURT

121 122

FILED FEB 3 1964

GENERAL MOTORS CORPORATION, a Delaware corporation,

Plaintiff and Appellee

v.

CITY OF DETROIT, a municipal corporation of the State of Michigan, and CHARLES N. WILLIAMS, its Treasurer,

Defendants and Appellants

GENERAL MOTORS CORPORATION, a Delaware corporation,

Plaintiff and Appellee

v.

COUNTY OF WAYNE, a county of the State of Michigan, and HAROLD E. STOLL, its Treasurer,

Defendants and Appellants

Justice Adams took no part in this decision

BEFORE THE ENTIRE BENCH, EXCEPT SOURIS AND SMITH, JJ.

DETHMERS, J.

Plaintiff sued to recover 1959 personal property taxes paid defendants under protest. From summary judgments against them, defendants appeal.

The personal property involved consisted of machinery and

Delaware corporation,

Plaintiff and Appellee

v.

COUNTY OF WAYNE, a county of the State of Michigan, and HAROLD E. STOLL, its Treasurer,

Defendants and Appellants

Justice Adams took no part in this decision

BEFORE THE ENTIRE BENCH, EXCEPT SOURIS AND SMITH, JJ.

DETHMERS, J.

Plaintiff sued to recover 1959 personal property taxes paid defendants under protest. From summary judgments against them, defendants appeal.

The personal property involved consisted of machinery and equipment owned by the United States, located in plaintiff's plants in Detroit and used by it, as a defense contractor, in making goods for the United States under contracts between them.

The trial court's decision was planted on our holding in Continental Motors Corporation v. Township of Muskegon, 365 Mich 191, that prior to the amendment contained in PA 1959, No 266*

This amendment provides: " * * personal property not otherwise taxed under this act which is in the possession of any person, firm or corporation using same in connection with a business conducted for profit shall be deemed the property of such person for taxation and assessed to him accordingly."

RECEIVED
FEB 1 1964
CORPORATION COUNSEL
LEGAL DIVISION

(not applicable to 1959 taxes), Michigan's general property tax act* did not authorize taxation of possessory interests held by individuals in personal property owned by the United States.

Defendants stress what they term distinctions on the facts between this case and Continental. These may be pertinent to other objections raised by plaintiff to the tax. They are not so as to the controlling point in Continental, also raised by plaintiff here, that no statutory (here also charter) authority existed for collection of the 1959 tax in question.

Defendants' discussions of where the legal incidence, as distinguished from economic burden, of the tax falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental. Michigan Constitution 1908, art 10, § 3, provides for a personal property tax to "be levied on such property" and that it shall be "taxation for such property" and "taxation on such property." The mentioned general property tax act implements this by providing "that all property, real and personal * * * shall be subject to taxation." In Continental this Court said that our law authorized an ad valorem tax "on the personal property itself." The city charter of Detroit, title VI, ch 2, § 1, provides for "taxes upon personal property." The charter does not and could not confer

charter) authority existed for collection of the 1959 tax in question.

Defendants' discussions of wnere the legal incidence, as distinguished from economic burden, of the tax falls, and whether it represents an assessment in personam or in rem, while of possible value in a consideration of the question of implied constitutional immunity from State taxation of the Federal government, its agencies and property, are not decisive of the applicability of Continental. Michigan Constitution 1908, art 10, § 3, provides for a personal property tax to "be levied on such property" and that it shall be "taxation for such property" and "taxation on such property." The mentioned general property tax act implements this by providing "that all property, real and personal * * * shall be subject to taxation." In Continental this Court said that our law authorized an ad valorem tax "on the personal property itself." The city charter of Detroit, title VI, ch 2, § 1, provides for "taxes upon personal property." The charter does not and could not confer taxing powers beyond those authorized by Constitution and statute. Clearly, the tax is on the property.

Defendants say Continental is not controlling because there are distinctions between the governing law involved here and in Continental. These are said to consist of the following, namely, (1) that this assessment is made under a Detroit charter provision that "persons in possession of any personal property shall pay all taxes assessed thereon"** while the assessment made by a township in Continental was made under

*CL 1948, § 211. 1 et seq. as last amended by PA 1958, No 209 (Stat Ann 1957 Cum Supp § 7. 1 et seq.).

**Title VI, Ch 4, § 1.

the State's general property tax law which did not contain a comparable provision, and (2) that the tax here is not, as was considered in Continental, a tax on possessory or other limited interests in personal property separate and distinct from the property itself, but is actually a tax on the whole interest in the personal property, made, by ordinance, payable by the person in possession.

The holding in Continental may not thus be escaped. This Court held therein that as of 1959 " * * * our law authorized only an ad valorem tax on the personal property itself without providing for taxation of possessory interests * * *". If the tax is on a possessory interest, it is invalid under Continental.

On the other hand, if, as defendants urge, the tax is on the entire interest in the personal property, it is a tax on personal property of the United States, which is immune therefrom. See City of Detroit v. Murray Corporation, 355 US 489 (78 S Ct 458, 486; 28 L ed2d 441, 460), and cases therein cited beginning with McCulloch v. Maryland, 17 US 316, 376 (4 Wheat.) (4 L ed 579), and including such as United States v. Allegheny County, 322 US 174 (64 S Ct 908; 88 L ed 1209).

Either way the tax was improperly assessed. Cases such as Detroit Shipbuilding Co. v. City of Detroit, 228 Mich 145, and City of Detroit v. Gray, 314 Mich 516, interpreting the charter provision here pressed by defendants, are of no help to them because those cases involved personal property owned by one person and in the possession of another, not, as here, property of the United States immune from taxation.

under Continental.

On the other hand, if, as defendants urge, the tax is on the entire interest in the personal property, it is a tax on personal property of the United States, which is immune therefrom. See City of Detroit v. Murray Corporation, 355 US 489 (78 S Ct 458, 486; 28 L ed2d 441, 460), and cases therein cited beginning with McCulloch v. Maryland, 17 US 316, 376 (4 Wheat.) (4 L ed 579), and including such as United States v. Allegheny County, 322 US 174 (64 S Ct 908; 88 L ed 1209).

Either way the tax was improperly assessed. Cases such as Detroit Shipbuilding Co. v. City of Detroit, 228 Mich 145, and City of Detroit v. Gray, 314 Mich 516, interpreting the charter provision here pressed by defendants, are of no help to them because those cases involved personal property owned by one person and in the possession of another, not, as here, property of the United States immune from taxation.

As noted in Continental, the 1959 statutory amendment, applicable to 1961 and subsequent taxes, provides, with respect to facts like those in the instant case, that the property shall be deemed to be the property of the user (here the plaintiff) for taxation. Under City of Detroit v. Murray Corporation, supra, the imposition of the tax thereunder would encounter no Federal constitutional barrier because the Court said that

it would amount to a tax on the user's possessory interest, not on United States property. Detroit's charter provision does not, in terms, undertake to tax the user's possessory interest, as does the 1959 statutory amendment, but, instead, imposes the tax on the property and makes it chargeable against the possessor.

Defendants say this case should not have been decided on a motion for summary judgment because the pleadings and their affidavit of merits gave rise to issues of fact. However, despite the existence of disputes of fact, when resolving all of them in favor of defendants would not avail to preclude a verdict for plaintiff, then plaintiff's motion for summary judgment, under Court Rule No 30 (1945), then in effect, should be granted. Whittenberg v. Carnegie, 328 Mich 125.

Affirmed. No costs, a public question being involved.